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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,048	03/27/2004	Peter Laitmon	256-001	9535
30332	7590	02/01/2007	EXAMINER	
MEREDITH & KEYHANI, PLLC 330 MADISON AVE. 6TH FLOOR NEW YORK, NY 10017			HOEY, ALISSA L	
			ART UNIT	PAPER NUMBER
			3765	
SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE		
3 MONTHS	02/01/2007	PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/811,048	LAITMON, PETER	
	Examiner	Art Unit	
	Alissa L. Hoey	3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 26 November 2006.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-33 is/are pending in the application.
 4a) Of the above claim(s) 2,3,7,11,12,14-17 and 20-33 is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1,4-6,8-10,13,18 and 19 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/19/05</u> . | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

Election/Restrictions

1. Claims 2, 3, 7, 11, 12, 14-17 and 20-33 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to nonelected embodiments of the attachment means and lower leg portions, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 11/26/06.
2. Note that claims 3 and 12 are withdrawn due to their dependency upon claims 2 and 11 where are non-elected.

Information Disclosure Statement

3. The information disclosure statement filed 12/19/05 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document (GB 2328496 and DE 19713594); each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 5 and 13 contain the trademark/trade name Velcro. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The

claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe hook and loop fasteners and, accordingly, the identification/description is indefinite.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 4, 5 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Wruck (US 5,033,126).

In regard to claim 1, Wruck teaches a protective rain legging comprising a waterproof leg encircling portion with an inner side, an outer side, a top opening and a bottom opening (figures 1-7: column 5, lines 16-20). The top opening being higher on the outer side of the leg encircling portion and sloping downward towards said lower inner side (figure 1). An attachment means (82) fixedly attached to said outer side of said top opening for attaching the leg encircling portion to the waist portion of a garment worn by the wearer (figures 1 and 2).

In regard to claim 4, Wruck teaches the attachment means comprises a first piece of fabric fixedly attached to the outer portion of the top opening of the leg

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encircling portion (82). The first piece of fabric being enough to allow the second end of the first piece of fabric to be attached to the garment around the waist of the wearer using a securing means (84, 80).

In regard to claim 5, Wruck teaches the securing means being selected from the group consisting of Velcro, buckle, clip, snap, button, tie (84, 80).

In regard to claim 10, Wruck teaches the leg encircling portion being lined with an insulating material (figure 10: column 8, lines 4-9).

7. Claims 1 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Stentiford (US 1,580,453).

In regard to claim 1, Stentiford teaches a protective rain legging (10) comprising a waterproof leg encircling portion with an inner side, an outer side, a top opening and a bottom opening (figures 1 and 2: page 1, lines 14-19). The top opening being higher on the outer side of the leg encircling portion and sloping downward towards said lower inner side (figures 1 and 2). An attachment means (13, 14) fixedly attached to said outer side of said top opening for attaching the leg encircling portion to the waist portion of a garment worn by the wearer (figures 1 and 2).

In regard to claim 6, Stentiford teaches the diameter of the leg encircling portion increases approaching the bottom opening, providing a bottom opening the substantially covers the shoes of the wearer, leaving the soles of the shoes exposed (figure 1, identifier 15).

8. Claim 13 is rejected under 35 U.S.C. 102(b) as being anticipated by DeMott (US 2003/0005505).

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In regard to claim 13, DeMott teaches a protective rain legging (10) comprising a waterproof leg encircling portion with an inner side, an outer side, a top opening, a bottom opening, an attachment means and an insulating layer (figures 1 and 2: paragraph 0033). The top opening being higher on the outer side of the leg encircling portion and sloping downward towards the lower inner side (figures 1 and 2). The attachment means is comprised of a first piece of fabric fixedly attached to said outer portion of the top opening of the leg encircling portion (figures 1 and 2, identifiers 28, 29). The first piece of fabric being long enough to allow the second end of the first piece of fabric to be attached to the garment around the waist of the wearer using a Velcro strip as a securing means (paragraph 0036). An insulating layer being fixed into the inside of the leg encircling portion (figures 3 and 4, identifier 36).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 8, 9, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wruck.

Wruck teaches a rain legging as described above in claim 1. However, Wruck fails to teach the leg encircling portion having a promotional display affixed thereto, selected from the group of logo, advertisement, brand name, trademark and emblem.

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It would have been obvious to have provided a promotional display or any other type of ornamentation on the leg encircling portion, because as long as the rain legging prevents the user's leg from getting wet, the display on the ornamentation can be any as desired including promotional displays or no promotional displays.

In re Said, 161 F.2d 229, 73 USPQ 431 (CCPA 1947), the court found that matters relating to ornamentation only which have no mechanical function cannot be relied upon to patentably distinguish the claimed invention from prior art.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and can be found cited in PTO-892 form submitted herewith.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (571) 272-4985. The examiner can normally be reached on M-F (8:00-5:30)Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on (571) 272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ALH



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